IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 32 OF 2003

Johnny Coutinho,
presently lodged
in Central Jail,
Aguada, Goa. ... Petitioner

versus

1. State of Goa
through Chief
Secretary,
Panaji, Goa.

2. Inspector General
of Prisons,
Collector North
Goa, Panaji Goa.

3. Superintendent of
Prisons, Aguada
Central Jail,
Aguada Goa. ... Respondents

Mrs. Asha A. Desai, Advocate for the Petitioner.

Mrs. Winnie Coutinho, Additional Public Prosecutor
for the Respondents.

CORAM : P. V. HARDAS, J.

DATED : 9TH JANUARY, 2004.

ORAL JUDGMENT

Rule.

2. By consent of the learned Counsel for the parties Rule made returnable forthwith and the Petition is heard finally at the stage of admission.

3. This Petition has been filed by the Petitioner taking exception to the Order passed by the Inspector General of Prisons, Panaji, Goa, dated 26th June, 2003, rejecting the application submitted by the Petitioner for grant of parole. The Petitioner had applied for being released on parole on the ground that his parents are aged and infirm and there was no one to look after the parents. The application of the Petitioner, for being released on parole, came to be rejected by the impugned Order on the ground that the reason quoted in the application for release on parole did not appear to be genuine and of emergent nature. In the Affidavit of the Inspector General of Prisons, Panaji, Goa, which is filed, it is stated at paragraph 3 that the application of the Petitioner was rejected based on the Police Report dated 3rd June, 2003.

4. The learned Additional Public Prosecutor has made available the record and the Police Report therein. A perusal of the Police Report dated 3rd June, 2003, reveals that the Superintendent of Police, South Goa District, Margao, while enquiring into the application submitted by the Petitioner expressed an apprehension

that since the family of the deceased resides in the vicinity of the house of the Petitioner, there was a possibility of some untoward incident.

5. In the Affidavit of the Inspector General of Prisons, at paragraph 2, it is stated that earlier the Petitioner had been granted 15 days furlough from 18th March, 1998 to 31st March, 1998. It is also stated that the Petitioner had been granted parole initially for a period of 30 days from 8th August, 2000 to 7th September, 2000 which was extended by a period of 15 days. The Petitioner had also been granted 15 days parole from 26th February, 2002 to 12th March, 2003.

6. The Petitioner had been granted parole twice and had been released on furlough once and the Affidavit does not disclose that the Petitioner had misused the discretion of releasing him on parole. There are no adverse reports against the Petitioner and, therefore, according to me, the apprehension expressed by the Superintendent of Police in his Report dated 3rd June, 2003, is not only misplaced but is without any material on record.

7. In such circumstances, therefore, according to me, the Authorities vested with the exercise of the discretion have not exercised the discretion based on the

material on record. The reason for rejection of the application for parole is not borne out from the material on record. In view of this, the Petition deserves to be allowed.

8. Rule made absolute. The Order impugned in the present Petition is hereby quashed and set aside and the application filed by the Petitioner for parole is allowed on the condition that the Petitioner shall execute a Surety Bond of Rs.10,000/- and a Personal Bond of Rs.10,000/- in Forms A and B and to observe the conditions contained therein. The Petitioner is also directed to report to the nearest Police Station on his being released on parole and thereafter to report once a week to the said Police Station.

9. Rule made absolute on the above terms and conditions. No costs.

P. V. HARDAS, J.

RD.